

RECORDING REQUESTED BY:
Erickson Realty Ltd.
4900 SW Griffity Drive, Suite 133
Beaverton, Oregon 97005

WHEN RECORDED MAIL TO:

Dept. of Toxic Substance Control
8800 Cal Center Drive
Sacramento, CA 95826-3200
Attn: James L. Tjosvold, PE, Chief
Northern California-Central Cleanup
Operations Branch



Nevada, County Recorder
Jewett-Burdick

DOC- 2004-0012044-00

Check Number 11240

Thursday, APR 01, 2004 13:28:49

REC \$20.00 CCF \$2.00 SBS \$15.00

MIC \$1.00 AUT \$16.00

Ttl Pd \$54.00

Nbr-0000297197

ALB/AB/1-16

SPACE ABOVE THIS LINE RESERVED FOR RECORDERS USE

COVENANT TO RESTRICT USE OF PROPERTY

ENVIRONMENTAL RESTRICTION

Re: Indian Flat Lot 8

between Indian Flat Road and Highway 49 in Nevada County, California 95959

Assessor's Parcel Number 04-140-62

This Covenant and Agreement ("Covenant") is made by and between Erickson Realty Ltd.(the "Covenantor"), the current owner of property situated in Nevada City, County of Nevada, State of California, described in Exhibit "A", attached hereto and incorporated herein by this reference (the "Property"), and the Department of Toxic Substances Control (the "Department"). Pursuant to Civil Code section 1471, the Department has determined that this Covenant is reasonably necessary to protect present

or future human health or safety or the environment as a result of the presence on the land of hazardous materials as defined in Health and Safety Code ("H&SC") section 25260. The Covenantor and the Department, collectively referred to as the "Parties", hereby agree that the use of the Property be restricted as set forth in this Covenant.

ARTICLE I STATEMENT OF FACTS

1.01 . The Property, totaling approximately 1.51 acres is more particularly described in Exhibit "A" and depicted in Exhibit "B", attached hereto and incorporated herein by this reference. The Property is located in an area adjacent to the northern boundary of State Highway 49 approximately 0.4 miles west of Nevada City and South of Indian Flat Road in the County of Nevada, State of California between milepost markers 16.37 to the east and 16.59 to the west. The Property is more specifically described as Nevada County Assessor's parcel Number 04-140-62, a portion of Indian Flat Lot 8.

1.03. Remedial measures have not been implemented on the Property. The Property that is the subject of this deed restriction contains stockpiled waste rock exposed at the surface that is associated with historical mining activities that were conducted on the property. As outlined in the February 13, 2003 report titled "ABANDONED MINE LAND PRELIMINARY ENDANGERMENT ASSESSMENT FOR LOT 8 INDIAN FLAT ROAD - NEVADA COUNTY CALIFORNIA (PEA report) the waste rock stockpile on the Property (identified as Waste Rock Stockpile #1 in the report) contains elevated concentrations of arsenic that are not acceptable for an unrestricted land use based on the screening level risk evaluation provided in the PEA report. The PEA report documenting the investigation and screening level risk assessment discussed above was approved by the Department on August 28, 2003. A copy of this PEA is on file in the Department's records.

This deed restriction is being entered into for the Property because arsenic, which is a hazardous substance as defined in H&SC section 25316, and is also a hazardous material as defined in H&SC section 25260, remains in waste rock material present at the surface of the Property.

As discussed under Section 7.07 of this document, the Covenantor has installed fencing to prevent access by unauthorized personnel. Fencing at the site consists of a five foot high chain link fence around the northern, eastern, and southern portion of the Property, and a four strand barbed wire fence along the western portion of the Property that borders an intermittent stream (Exhibit B shows the location of the chain link and barbed wire portions of the fencing). Operation and maintenance of this fence is addressed in a separate Operation and Maintenance (O&M) Agreement which is incorporated into this document by reference.

1.04. **As** detailed in the screening level risk assessment provided in the approved PEA report, the waste rock stockpile present at the surface of the Property contains arsenic, a hazardous substance, as defined in H&SC section 25316. The highest Arsenic concentration sampled in the waste rock on the Property was 55 milligrams per kilogram (mg/kg). Under a residential scenario, the calculated risk of 2×10^{-4} and hazard index of 3.0 posed by this amount and concentration of arsenic were determined to be unacceptable for unrestricted land use. This arsenic concentration was then evaluated using a trespasser scenario which resulted in a calculated risk of 4×10^{-5} and a hazard index of 6×10^{-1} . Based on the results of the screening level risk assessment provided in the PEA report, the Department concluded that use of the Property as a residence, hospital, school for persons under the age of 21 or day care center would entail an unacceptable cancer risk and non-cancer hazard.

Given the low potential for inhalation or incidental ingestion based on the larger grain size of the material comprising these features, the Department determined this risk level to be acceptable when the following steps were taken to prevent exposure: the execution and enforcement of this deed restriction, installation of fencing around the Property with posted signs on the fencing identifying the area as subject to this recorded deed restriction, and ongoing maintenance of such fencing and signage.

The Department further concluded that the Property, as it exists, and subject to the restrictions of this Covenant, does not present an unacceptable threat to human safety or the environment, if access to the Property is prohibited and there is no "sensitive use" development of the area as is prohibited in Section 4.01 of this document, and the only potential exposure scenario is a trespasser.

ARTICLE II

DEFINITIONS

2.01. Department. "Department" means the California Department of Toxic Substances Control and includes its successor agencies, if any.

2.02. Owner. "Owner" means the Covenantor, its successors in interest, and their successors in interest, including heirs and assigns, who at any time hold title to all or any portion of the Property.

2.03. Occupant. "Occupant" means Owners and any person or entity entitled by ownership, leasehold, or other legal relationship to the right to occupy any portion of the Property.

ARTICLE III

GENERAL PROVISIONS

3.01. Restrictions to Run with the Land. This Covenant sets forth protective provisions, covenants, restrictions, and conditions (collectively referred to as "Restrictions"), subject to which the Property and every portion thereof shall be improved, held, used, occupied, leased, sold, hypothecated, encumbered, and/or conveyed. Each and every Restriction: (a) runs with the land pursuant to H&SC section 25355.5(a)(1)(C) and Civil Code section 1471; (b) inures to the benefit of and passes with each and every portion of the Property, (c) is for the benefit of, and is enforceable by the Department, and (d) is imposed upon the entire Property unless expressly stated as applicable only to a specific portion thereof.

3.02. Binding upon Owners/Occupants. Pursuant to H&SC section 25355.5(a)(1)(C), this Covenant binds all owners of the Property, their heirs, successors, and assignees, and the agents, employees, and lessees of the owners, heirs, successors, and assignees. Pursuant to Civil Code section 1471, all successive owners of the Property are expressly bound hereby for the benefit of the Department.

3.03. Written Notice of the Presence of Hazardous Substances. Prior to the sale, lease or sublease of the Property, or any portion thereof, the owner, lessor, or sublessor shall give the buyer, lessee, or sublessee notice that hazardous substances are located on or beneath the Property, as required by H&SC section 25359.7.

3.04. Incorporation into Deeds and Leases. The Restrictions set forth herein shall be incorporated by reference in each and all deeds and leases for any portion of the Property.

3.05. Conveyance of Property. The Owner shall provide notice to the Department not later than thirty (30) days after any conveyance of any ownership interest in the Property (excluding mortgages, liens, and other non-possessory encumbrances). The Department shall not, by reason of this Covenant, have authority to approve, disapprove, or otherwise affect proposed conveyance, except as otherwise provided by law, by administrative order, or by a specific provision of this Covenant.

3.06 Costs of Administering the Deed Restriction to be paid by Owner. The terms of this deed restriction run with the land and will continue in perpetuity unless a variance is granted pursuant to section 6.01, or unless terminated pursuant to section 6.02. The Department has already incurred and will in the future incur costs associated with the administration of this deed restriction. Therefore, the Owner hereby covenants for himself and for all subsequent owners that, pursuant to Title 22 California Code of Regulations section 67391.1 (h), the property owner agrees to pay the Department's costs in

administering the deed restriction. In the event that property ownership changes between the time that the Department's administrative costs were incurred and the invoice for such costs is received, each owner of the property for the period covered by the invoice, as well as the current owner is responsible for such costs. The O&M Agreement provides additional information on payment of costs for activities associated with the deed restriction as well as information on the financial assurance established as part of the O&M Agreement.

ARTICLE IV RESTRICTIONS

4.01. Prohibited Uses. The Property shall not be used for any of the following purposes:

- (a) A residence, including any mobile home or factory built housing, constructed or installed for use as residential human habitation.
- (b) A hospital for humans.
- (c) A public or private school for persons under 21 years of age.
- (d) A day care center for children

4.02. Soil Management.

- (a) No activities that will disturb the waste rock material present at or below the ground surface (e.g., excavation, grading, removal, trenching, filling, earth movement or mining) shall be allowed on the Property without a Soil Management Plan and a Health and Safety Plan approved by the Department.

4.03. Prohibited Activities. The following activities shall not be conducted at the Property.

- (a) Raising of food (cattle, food crops).

- (b) Drilling for water, oil, or gas without prior written approval by the Department.
- (c) Disturbance of naturally occurring vegetation unless required for fire safety or as part of fire suppression activities.
- (d) Development of trails or roads that provide access to or through the Property.
- (e) Use of the area for any recreational purpose that would entail human entry onto the Property (e.g., a golf course).
- (f) Excavation without the Department's prior approval of a Soil Management Plan.

4.04. Access for Department. The Department shall have reasonable right of entry and access to the Property for inspection, monitoring, and other activities consistent with the purposes of this Covenant as deemed necessary by the Department in order to protect the public health or safety, or the environment.

4.05. Access for Implementing Operation and Maintenance. The entity or person(s) responsible for implementing the Operation and Maintenance Agreement shall have reasonable right of entry and access to the Property for the purpose of implementing the Operation and Maintenance Agreement for the life of such Agreement, anticipated to be in effect in perpetuity unless impacted by a modification pursuant to paragraph 6.01 – Variance, paragraph 6.02- Termination or paragraph 6.03 Term.

ARTICLE V

ENFORCEMENT

5.01. Enforcement. Failure of the Covenantor, Owner or Occupant to comply with any of the Restrictions specifically applicable to it shall be grounds for the Department to require that the Covenantor or Owner modify or remove any improvements ("Improvements" herein shall mean all buildings, roads, driveways, and paved parking areas), constructed or placed upon any portion of the Property in violation of the

Restrictions. Violation of this Covenant shall be grounds for the Department to file civil or criminal actions as provided by law.

ARTICLE VI

VARIANCE, TERMINATION, AND TERM

6.01. Variance. Covenantor, or any other aggrieved person, may apply to the Department for a written variance from the provisions of this Covenant. Such application shall be made in accordance with H&SC section 25233.

6.02 Termination. Covenantor, or any other aggrieved person, may apply to the Department for a termination of the Restrictions or other terms of this Covenant as they apply to all or any portion of the Property. Such application shall be made in accordance with H&SC section 25234.

6.03 Term. Unless ended in accordance with the Termination paragraph above, by law, or by the Department in the exercise of its discretion, this Covenant shall continue in effect in perpetuity.

ARTICLE VII

MISCELLANEOUS

7.01. No Dedication Intended. Nothing set forth in this Covenant shall be construed to be a gift or dedication, or offer of a gift or dedication, of the Property, or any portion thereof to the general public or anyone else for any purpose whatsoever.

7.02. Department References. All references to the Department include successor agencies/departments or other successor entity.

7.03. Recordation. The Covenantor shall record this Covenant, with all referenced Exhibits, in the County of Nevada within ten (10) days of the Covenantor's receipt of a fully executed original.

7.04. Notices. Whenever any person gives or serves any Notice ("Notice" as used herein includes any demand or other communication with respect to this Covenant), each such Notice shall be in writing and shall be deemed effective: (1) when delivered, if personally delivered to the person being served or to an officer of a corporate party being served, or (2) three (3) business days after deposit in the mail, if mailed by United States mail, postage paid, certified, return receipt requested:

To Owner:

Erickson Realty, Ltd.
Attn: Herbert G. Rupp
4900 SW Griffith Avenue, Suite 133
Beaverton, Oregon 97005

To Department:

Mr. James L. Tjosvold, P.E., Chief
Northern California-Central Cleanup Operations Branch
Site Mitigation and Brownfields Reuse Program
Department of Toxic Substances Control
8800 Cal Center Drive
Sacramento, California 95826-3200

Any party may change its address or the individual to whose attention a Notice is to be sent by giving written Notice in compliance with this paragraph.

7.05. Partial Invalidity. If any portion of the Restrictions or other term set forth herein is determined by a court of competent jurisdiction to be invalid for any reason, the

surviving portions of this Covenant shall remain in full force and effect as if such portion found invalid had not been included herein.

7.06 Statutory References. All statutory references include successor provisions.

7.07 Fencing and Maintenance required. The five foot high chain link fencing installed along the northern, eastern, and southern portion of the Property and the four strands of two pointed barbed wire fencing installed along the western portion of the Property (as depicted in Exhibit B) shall ensure that the Property remains secured. The fencing shall be maintained for as long as the hazardous materials remain on the Property. Upon identifying that the security provided by the fence has been compromised (e.g., damaged or portions of the fence removed or cut by trespassers), the fence shall be temporarily secured to prevent access and repaired as soon as possible. Additionally, the condition of the fence and any required maintenance shall be evaluated as part of the quarterly and annual inspections of the area outlined in 7.09 below.

7.08 Signs Marking the Deed Restricted Property. Signs indicating that the area is subject to a deed restriction should be posted so they are visible from the surrounding area and any existing routes of entry to the Property. The signs should read "This area is subject to a deed restriction recorded in Nevada County on (insert actual recording date in Month, Day, Year format) in Book ____ and Page _____. (Insert actual Book and Page numbers.) This Deed restriction was recorded because arsenic released by mining activities is present in concentrations on this parcel that do not allow for unrestricted use. Human contact with the soil and rock on this parcel should be avoided. For more information please contact the Department of Toxic Substances Control at (916) 255-3586."

The owner shall post and maintain all signs on the perimeter fencing. The northern and southern fence lines shall include a minimum of one sign each. Given the length of the eastern fence line, a minimum of two signs are required along the eastern fence line.

Given the length, topography, and composition of the western fence line, a minimum of one sign is required on the chain link portion of the western fence line together with a minimum of three signs that are required to be proportionately spaced along the western portion of the fence consisting of the barbed wire. The signs shall be made of a material able to withstand the elements.

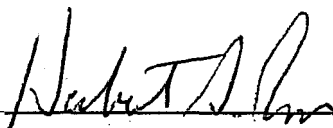
7.09 Annual Reportins Requirement. Section 67391.1 of title 22, division 4.5, chapter 39 of the California Code of Regulations titled “Requirements for Land Use Covenants” (22 CCR § 67391.1) requires an implementation and enforcement plan to address the monitoring and maintenance requirements necessary to ensure that prohibited uses are not occurring on the deed restricted property. This implementation and enforcement plan is outlined in the O&M Agreement and requires a quarterly inspection of the barbed wire portion of the fencing along with an annual inspection of entire fence, and an annual report filed with the Department by January 15th of each calendar year subsequent to the recording of this deed restriction. This annual report filed under penalty of perjury by the then current owner(s), shall certify that the property is being used in a manner consistent with the terms of the deed restriction, and specify all monitoring or maintenance efforts taken to ensure compliance with the deed restriction’s terms. If the property owner identifies any violations of the deed restriction during the quarterly or annual inspection, the property owner must, within 90 days of identifying the violation, determine the identity of the party in violation, send a letter advising the party of the violation of the deed restriction and a demand that the violation cease immediately. Such letter shall be sent by certified mail with return receipt and signature required.

The annual report must include the dates, times, and names of reviewers who conducted the quarterly and annual inspections. It also shall describe how the observations were performed that were the basis for the statements/conclusions in the annual report (e.g. drive by, fly over, walk in, etc.). The annual report must also certify that the signs on the fence were present and visible and legible during the quarterly and annual inspections. If violations are noted by the observer, the annual report must detail the steps taken to

return to compliance. Additionally, copies of any correspondence related to the enforcement of the deed restriction shall be sent to the Department within ten days of its original transmission.

IN WITNESS WHEREOF, the Parties execute this Covenant.

Covenantor: Erickson Realty Limited

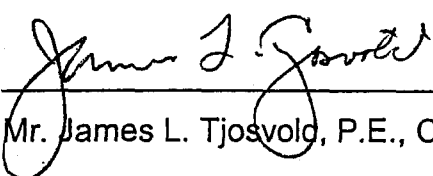


Herbert G. Rupp, Agent

3/19/04

Date

Department of Toxic Substances Control:



Mr. James L. Tjosvold, P.E., Chief

3/23/04

Date

STATE OF Oregon)
)
COUNTY OF Washington)

On this 19th day of March, in the year 2004,

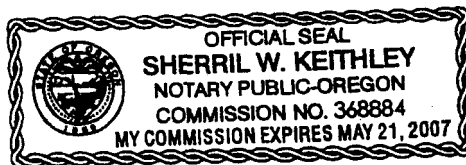
before me, Sherril W. Keithley personally appeared

Herbert G Rupp of Erickson Realty, Ltd ,

personally known to me (or proved to me on the basis of satisfactory evidence) to be
the person(s) whose name(s) is are subscribed to the within instrument and
acknowledged to me that he ~~she/they~~ executed the same in his ~~her/their~~ authorized
capacity (as) ~~(as)~~, and that by his ~~her/their~~ signature(s) on the instrument the person(s), or
the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature Sherril W Keithley



CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of

Sacramento

SS.

On March 23, 2004 before me,

Date

Kathleen Duncan

Name and Title of Officer (e.g., "Jane Doe, Notary Public")

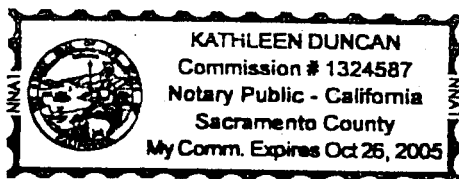
personally appeared

James L. Tjosvold

Name(s) of Signer(s)

☒ personally known to me

☐ proved to me on the basis of satisfactory evidence



to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Kathleen Duncan
Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: _____

Document Date: _____

Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer

Signer's Name: _____

- ☐ Individual
- ☐ Corporate Officer — Title(s): _____
- ☐ Partner — ☐ Limited ☐ General
- ☐ Attorney-in-Fact
- ☐ Trustee
- ☐ Guardian or Conservator
- ☐ Other: _____

Signer is Representing: _____

RIGHT THUMBPRINT
OF SIGNER
Top of thumb here

KENNETH E. BAKER

Land Surveyor
ANDREW R. CASSANO

Land Use Planner

THOMAS L. LOTT

Civil Engineer
WILLIAM D. GREEN
Civil Engineer

NEVADA CITY ENGINEERING, INC.

505 COYOTE STREET, SUITE B • P.O. BOX 1437
NEVADA CITY, CALIFORNIA 95959 • TELEPHONE (530) 265-6911 • FAX (530) 265-8058

Engineering • Surveying • Planning

October 17, 2003

EXHIBIT "A"


A Deed Restriction is being created on the following described parcel:

All that portion of the lands of Erickson Realty, Ltd. as described in the deed filed in Document No. 94-17342, Nevada County Records, being a portion of Parcel 8 of Lot Line Adjustment 93-12 as filed in Book 18 of Parcel **Maps** at Page 201, Nevada County Records, and being situate within the Northeast quarter of Section 11, Township 16North, Range 8 East, M.D.M., being more particularly described as follows:

Commencing **at** the southwest corner of the herein described area from which the center quarter corner of said Section 11 bears S.55°49'02"W. 1526.86 feet; thence from said point of commencement along the boundary the following thirty-one (31) successive courses:
N.28°32'00"W. 118.30 feet; N.10°14'00"W. 62.15 feet; N.26°08'00"E. 28.45 feet; N.23°33'00"E. 35.12 feet; N.15°20'00"W. 47.83 feet; N.00°44'00"W. 41.81 feet; N.33°26'00"W. 29.85 feet; N.21°19'00"W. 29.68 feet; N.33°06'00"E. 38.92 feet; N.16°27'00"E. 44.54 feet; N.10°14'00"W. 43.37 feet; N.02°19'00"E. 48.69 feet; N.73°24'00"E. 16.88 feet; S.81°16'00"E. 19.59 feet; S.40°26'00"E. 29.76 feet; S.79°39'00"E. 56.13 feet; S.31°49'00"E. 14.60 feet; S.23°20'00"E. 54.63 feet; S.07°55'00"E. 49.78 feet; S.17°26'00"W. 19.28 feet; S.24°52'00"W. 15.34 feet; S.15°40'00"E. 17.20 feet; S.01°21'00"W. 34.57 feet; S.18°41'00"W. 15.26 feet; S.37°17'00"W. 15.26 feet; S.00°18'00"W. 55.95 feet; S.20°37'00"E. 21.97 feet; S.02°48'00"E. 24.61 feet; S.12°23'00"W. 33.79 feet; S.20°06'00"E. 82.28 feet; and S.58°24'00"W. 116.29 feet to the point of commencement and containing 1.51 acres.

The above described area being further delineated on Exhibit "B" attached hereto.




Kenneth E. Baker, L.S. 3959

COURSE LEGEND

| | | |
|----------|---------------|---------|
| 1. | N 28°32'00"W | 118.30' |
| 2. | N 10°14'00"W | 62.15' |
| 3. | N 26°08'00"E | 28.45' |
| 4. | N 23°33'00"E | 35.12' |
| 5. | N 15°20'00"W | 47.83' |
| 6. | N 00°44'00" W | 41.81' |
| 7. | N 33°26'00" W | 29.85' |
| 8. | N 21°19'00"W | 29.68' |
| 9. | N 33°06'00" E | 38.92' |
| 10. | N 16°27'00" E | 44.54' |
| 11. | N 10°14'00" W | 43.37' |
| 12. | N 02°19'00"E | 48.69' |
| 13. | N 73°24'00"E | 16.88' |
| 14. | S 81°18'00" E | 19.59' |
| 15. | S 40°26'00" E | 29.76' |
| 16. | S 79°39'00" E | 56.13' |
| 17. | S 31°49'00" E | 14.60' |
| 18. | S 23°20'00"E | 54.63' |
| 19. | S 07°55'00"E | 49.78' |
| 20. | S 17°26'00"W | 19.28' |
| 21. | S 24°52'00" W | 15.34' |
| 22. | S 15°40'00"E | 17.20' |
| 23. | S 01°21'00"W | 34.57' |
| 24. | S 18°41'00" W | 15.26' |
| 25. | S 37°17'00" W | 15.26' |
| 26. | S 00°18'00" W | 55.95' |
| 27. | S 20°37'00" E | 21.97' |
| 28. | S 02°48'00"E | 24.61' |
| 29. | S 12°23'00" W | 38.79' |
| 30. | S 20°06'00" E | 82.28' |
| 31. | S 58°24'00"W | 116.29' |
| TIE: 32. | S 51°00'00" W | 54.64' |

ERICKSON REALTY, LTD.

DOG. NO. 44-17342

APN 04-140-62

N 39°16'02"
W 121°02'32.5"

N 39°16'01"
W 121°02'33.5"

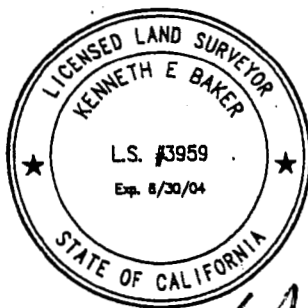
LAT. & LONG.
(TYP)

5' CHAIN LINK
FENCING (TYP)

4 STRAND
BARBED WIRE
FENCING (TYP)



SCALE: 1"=100'
OCTOBER, 2003



N 39°15'58"
W 121°02'32.5"

N 39°15'56"
W 121°02'32"

N 39°15'56.5"
W 121°02'33"
257.13'

EXHIBIT "B"

Erickson Realty, Ltd.

WITHIN A PORTION OF
NE 1/4 SECTION 11, T. 16 N., R. 8 E., M.D.M.
WITHIN THE UNINCORPORATED TERRITORY OF
NEVADA COUNTY, CALIFORNIA

NEVADA CITY ENGINEERING, INC.
505 COYOTE STREET - P.O. BOX 1437 - NEVADA CITY, CALIFORNIA

STATE CENTER 1/4
SECTION 11

ROUTE

49

32 (TIED)

31

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